

United States Bankruptcy Court  
Eastern District of Virginia  
Richmond Division

In Re:  
Tracy Wayne Simmons and Debra Grace  
Simmons

BCN#: 17-35168-KRH  
Chapter: 13

Debtors

Wilmington Savings Fund Society, FSB, as  
trustee of Upland Mortgage Loan Trust A  
or present noteholder,

Movant/Secured Creditor,

v.

Tracy Wayne Simmons and Debra Grace  
Simmons

Debtors

and

Carl M. Bates

Trustee

Respondents

**Consent Order Modifying Automatic Stay**

This matter was before the court on May 2, 2018, on the motion of Wilmington Savings Fund Society, FSB, as trustee of Upland Mortgage Loan Trust A, for relief from the automatic stay with respect to the real property located at 11031 Wooferton Court, Midlothian, VA 23112 and more particularly described as follows:

Gregory N. Britto, Esquire  
VSB #23476  
William M. Savage, Esquire  
VSB #26155  
Malcolm B. Savage, III, Esquire  
VSB #91050  
Thomas J. Gartner, Esquire  
VSB #79340  
Mary F. Balthasar Lake, Esquire  
VSB #34899  
Leonard C. Tengco, Esquire  
VSB #76395  
Shapiro & Brown, LLP  
501 Independence Parkway, Suite 203  
Chesapeake, Virginia 23320  
(703) 449-5800  
17-270140

ALL that lot, piece or parcel of land lying and being in Matoaca District, Chesterfield County, Virginia known and designated as Lot45 all as shown on a plat prepared by E. D. Lewis & associates, P. C., entitled "Colllington Section 7", dated June 13, 2005, recorded December 6,2005 in the Clerk's Office, Circuit Court, Chesterfield County, Virginia in Plat book 160, pages 82 through 87 to which reference is made for a more particular description.

BEING the same real estate conveyed to Tracy W. Simmons and Debra Simmons, husband and wife, by deed from W. V. McClure, Inc., a Virginia corporation, t/a Main Street Homes, dated November 7, 2006 and recorded in the Clerk's Office, Circuit Court, Chesterfield County, Virginia, immediately prior hereto.

Upon consideration of which, it is **ordered**:

1. The debtor will resume making regular monthly installment payments in the amount of \$1,997.51 as they become due commencing on 05/01/18.
2. The debtor will cure the post-petition arrearage currently due to the movant through 04/01/18 in the total amount of \$13,016.06, which includes payments from November 1, 2017 to April 1, 2018 in the amount of \$1,997.51 each, attorney fees in the amount of \$850.00, filing fees in the amount of \$181.00, by completing the following payments:
  - a. That the Debtor(s) shall place arrears of \$13,016.06 into an amended plan to be filed within twenty-one (21) days of entry of this order. It is further ordered and agreed that the Movant, upon receipt of the aforesaid amended plan, shall be allowed to file an amended proof of claim reflecting both the pre-petition and post-petition arrears to be paid pursuant to this consent order.
3. It is further ordered and agreed that should the Debtor fail to timely file an amended plan allowing for the pre-petition and post-petition arrears as outlined in this order, or should any proposed amended plan fail to be confirmed, or should the Debtor default for a period of thirty days in making future monthly post-petition payments, commencing with the payment due May 1, 2018, the movant may mail a notice of default to the debtor by first class mail, postage prepaid, (and, if it desires, also by certified or registered mail) with a copy to debtor's counsel and the trustee by first class mail, postage prepaid, or by email at the same time as the notice of default is mailed to the debtor. The notice of default will state in simple and plain language:
  - a. That the debtor is in default in making at least one payment required under this order;

- b. The date and amount of each payment missed and any late charge or other fees necessary to cure default;
- c. The action necessary to cure the default, including any address to which payments must be mailed;
- d. That the debtor or trustee must take one of the following actions within fourteen days after the date of the mailing of the notice of default:
  - i. Cure the default
  - ii. File an objection with the court stating that no default exists; or
  - iii. File an objection with the court stating any other reason why an order granting relief from the automatic stay should not be entered;
- e. That if the debtor or trustee does not take one of the actions set forth in paragraph 3(d), the movant may file a certificate that it has complied with the terms of this order and that the court may grant relief from the automatic stay without further notice to the debtor; and;
- f. That if the automatic stay is terminated, the collateral may be sold at foreclosure.

If the debtor or trustee does not take one of the actions set forth in paragraph 3(d), the movant may submit a certificate stating that it has complied with the terms of this order and that neither the debtor nor the trustee has taken one of the actions set forth in paragraph 3(d) and may submit together with the certificate a draft order terminating the automatic stay.

If the debtor or trustee files an objection, the movant must set the matter for hearing and give notice of the hearing to the debtor, debtor's counsel and the trustee. At the hearing, the court may terminate the stay or take other action appropriate to the circumstances.

4. The provisions of this order with respect to regular monthly installment payments expire one year after the date of the entry of this order. In the event of the default in payment of any regular monthly installment payment due more than one year after the date of the entry of this order, the movant must obtain relief by filing a new motion for relief from stay with appropriate notice and hearing.

5. Until an order is entered terminating the automatic stay, the movant may not refuse to accept or apply payments tendered by the debtor, even if such payments are late or in an improper amount; however, acceptance of non-conforming payments is without prejudice and shall not constitute a waiver of any default.

6. The automatic stay is modified to permit the note holder or servicing agent to send the

debtor payment coupons, payment statements or invoices, notices of late payment, notices of payment changes, notices of servicing transfers, or any other notice, other than a notice of acceleration or demand for payment of the entire balance, normally sent to customers in the ordinary course of business.

7. Should the Debtor default pursuant to the terms herein contained, unless otherwise ordered by this court, the Movant shall be entitled to reasonable attorneys fees in the amount of \$50.00 for issuance of a notice of default, and an additional \$100.00 for issuance of a certificate of default and preparation of an order terminating the automatic stay.

**May 17 2018**

Date  
Bankruptcy Court

**/s/ Kevin R Huennekens**

The Honorable Kevin R Huennekens, U.S.  
United States Bankruptcy Judge

Notice of Judgment or  
Order Entered on Docket **May 17 2018**

I ask for this:

/s/ Mary F. Balthasar Lake

Gregory N. Britto, Esquire  
Malcolm B. Savage, III, Esquire  
William M. Savage, Esquire  
Thomas J. Gartner, Esquire  
Mary F. Balthasar Lake, Esquire  
Leonard C. Tengco, Esquire  
Counsel for Movant

Seen & Agreed:

/s/ Julia Bonham Adair, with express permission

Julia Bonham Adair, Hathaway Adair, P.C, Counsel for Debtor(s)

Seen:

/s/ Carl M. Bates, with express permission

Carl M. Bates, Trustee

I certify that I have served the proposed Order upon all necessary parties to the action by first class mail, postage prepaid, on the 11<sup>th</sup> day of May, 2018.

/s/ Mary F. Balthasar Lake

Gregory N. Britto, Esquire  
Malcolm B. Savage, III, Esquire  
William M. Savage, Esquire  
Thomas J. Gartner, Esquire  
Mary F. Balthasar Lake, Esquire  
Leonard C. Tengco, Esquire  
Counsel for Movant

Copies are to be sent to:

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501 Independence Parkway, Suite 203  
Chesapeake, Virginia 23320

JULIA BONHAM ADAIR  
HATHAWAY ADAIR, P.C.  
710 N. HAMILTON STREET  
SUITE 200  
Richmond, VA 23221

Carl M. Bates  
P. O. Box 1819  
Richmond, VA 23218

Tracy Wayne Simmons  
11031 Wooferton Court  
Midlothian, VA 23112

Debra Grace Simmons  
11031 Wooferton Court  
Midlothian, VA 23112

**CERTIFICATION**

The undersigned certifies that the foregoing Consent Order Modifying Automatic Stay is identical to the form order required by Administrative Order 10-2 and that no modification, addition, or deletion has been made except to add the chapter 13 plan language.

/s/ Mary F. Balthasar Lake  
Gregory N. Britto, Esquire  
Malcolm B. Savage, III, Esquire  
William M. Savage, Esquire  
Thomas J. Gartner, Esquire  
Mary F. Balthasar Lake, Esquire  
Leonard C. Tengco, Esquire  
Attorney for Movant

**CERTIFICATION**

Pursuant to Local Rule 9022-1(C), I hereby certify that all necessary parties have endorsed the above order.

/s/ Mary F. Balthasar Lake  
Gregory N. Britto, Esquire  
Malcolm B. Savage, III, Esquire  
William M. Savage, Esquire  
Thomas J. Gartner, Esquire  
Mary F. Balthasar Lake, Esquire  
Leonard C. Tengco, Esquire  
Attorney for Movant

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